

Application 2022-144 Millard Avenue Residential Development Project

To:	Required action:
Hon David Parker, Minister for the Environment	Consider this report prior to making a decision under section 24 of the FTCA
Date submitted: 12 May 2023	

Ministry for the Environment contacts

Position	Name	Cell Phone	1 st Contact
Principal Author	Stephanie McNicholl		
Acting Manager	Rebecca Perrett	s 9(2)(a)	✓
Acting Director	Lorena Stephen	s 9(2)(a)	

Introduction

1. The Ministry for the Environment has prepared this report in consultation with the Office for Māori Crown Relations – Te Arawhiti and in accordance with section 17 of the Covid-19 Recovery (Fast-track Consenting) Act 2020 (the FTCA).
2. To satisfy obligations under section 6 of the FTCA, you must consider this report before you make any decision under section 24 of the FTCA regarding the application request to refer the Masterton Solar Farm Project (project) to an expert consenting panel (panel).

Proposed project

3. The applicant (DMST Internationals Limited) proposes to develop an approximately 7.3-hectare site into a residential development comprising 2 properties located at 42 and 64 Millard Avenue, Masterton.
4. The project will involve the construction of approximately 120 residential units and supporting infrastructure including roads and reserves intended to vest with Masterton District Council (MDC), accessways and three-waters services.
5. A location map is in Attachment 1.

Essential information

6. The following information is required under section 17(3) of the FTCA for the project area.

FTCA Section	Information required	Detail	
17(3)(a)	Relevant iwi authorities	2	Refer relevant sections below. <i>Contact details are in Attachment 2</i>
17(3)(b)	Treaty settlements that relate to the project area	2	
17(3)(a)	Relevant Treaty settlement entities	2	
17(3)(c)	Relevant principles and provisions of the Treaty settlements	Details in blue-shaded section below	
17(3)(d)	Groups with a negotiation mandate recognised by the Crown which are yet to commence Treaty settlement negotiations	N/A	
17(3)(d)	Current Treaty settlement negotiations	N/A	
17(3)(e)	Court orders recognising customary marine title or protected customary rights under the Marine and Coastal Area (Takutai Moana) Act 2011 or another Act	N/A – not in CMA	

Supporting information

Project details

7. The project site covers approximately 7.3-hectares of characteristically urban land. The site has frontage to and primary access from Millard Avenue to the north.
8. The project involves activities such as subdividing land, carrying out earthworks, discharging stormwater (which may contain contaminants) onto land or into water, constructing residential units, amenity planting, installing infrastructure or structures including roads and accessways, and infrastructure for three waters services.
9. The project layout is in Attachment 3.

Statutory matters relating to this report

10. No parts of the proposed project will occur in the coastal marine area, meaning:
 - a. pursuant to section 16(1) of the FTCA you are the sole party required to consider this report
 - b. the project is unaffected by the provisions of the Marine and Coastal Area (Takutai Moana) Act 2011 (MACAA) or any other Act pertaining to the grant of protected customary rights or customary marine title.
11. There are no court orders granted under the MACAA or another Act to consider in your referral decision for this project.¹

Iwi authorities

Methodology and information sources

12. This report must identify the relevant iwi authorities for the project, in accordance with section 17(3)(a) of the FTCA. Under section 7(1) of the FTCA, a relevant iwi authority for a referred project means an iwi authority whose area of interest includes the area in which a project will occur.
13. 'Area of interest' can mean different things depending on context and perspective and can be indicative (such as an area identified at the outset of Treaty settlement negotiations), formally agreed (such as in a deed of settlement or memorandum of understanding) or self-nominated. An area of interest can be difficult to define precisely on a map, particularly where a boundary that has been depicted on a small-scale map is scaled up and used precisely in relation to an individual site or property.
14. For the purpose of this report, we have considered information from the following sources as a starting point for identifying iwi areas of interest:
 - a. Te Arawhiti Internal Crown Asset Tracking Tool (i-Cat), an online database that records areas of interest associated with Treaty settlements and Treaty settlement negotiations
 - b. area of interest maps in signed Treaty settlement deeds or other Treaty settlement negotiation documents (including deeds of mandate)
 - c. the Iwi Areas of Interest viewer, an online application managed by the Ministry of Māori Development – Te Puni Kōkiri (TPK)
 - d. Te Kāhui Māngai (TKM), an online directory of iwi and Māori organisations maintained by TPK, which includes information on rohe (tribal areas) provided by those organisations.
15. Generally, the areas of interest shown on these databases for an iwi or group do not always completely align, and sometimes the differences can be significant. We carefully consider the reasons for such discrepancies, including the reliability or accuracy of the information shown and the local context and decision-making environment, before deciding which areas of interest we consider apply to a project under FTCA process.
16. The FTCA does not specifically define iwi authority but pursuant to section 7(2) of the FTCA, 'iwi authority' has the same meaning as in the Resource Management Act 1991

¹ Section 17(3)(e) of the FTCA requires this report to identify any court orders granted under the MACAA or another Act which recognise, in relation to the project area, customary marine title or protected customary rights.

(RMA): the authority which represents an iwi and which is recognised by that iwi as having authority to do so.

17. To identify iwi authorities associated with the identified areas of interest, we considered information from:
 - a. the sources noted above including the TKM online directory
 - b. Greater Wellington Regional Council (GWRC) and Masterton District Council (MDC) as relevant local authorities.

Iwi authorities relevant to project

18. We have identified, via the information sources, the relevant iwi authorities for the project area, as:
 - a. Ngāti Kahungunu Iwi Incorporated representing Ngāti Kahungunu ki Wairarapa
 - b. Rangitāne o Wairarapa representing Rangitāne o Wairarapa.
19. We note in their invited comments, both GWRC and MDC identified the same iwi authorities.
20. Additionally, we note that Ngāti Kahungunu ki Wairarapa represents Ngāti Kahungunu ki Wairarapa hapū for RMA purposes, and accordingly we have identified them as an 'other' party that may have an interest in the project area.

Treaty settlements and Treaty settlement entities

21. This report must identify the Treaty settlements that relate to the project area and relevant Treaty settlement entities, in accordance with sections 17(3)(b) and 17(3)(a) respectively. We use information relevant to the project area from the iCat online database and [NZ Government Treaty settlements website](#), together with advice from the Office for Māori Crown Relations – Te Arawhiti.
22. Under the FTCA, a Treaty settlement includes both a Treaty settlement Act and a Treaty settlement deed which is signed by both the Crown and the representative Māori group.
22. The project site falls within the area of interest covered by Treaty settlements with the following iwi:
 - a. Ngāti Kahungunu ki Wairarapa Tāmaki nui ā Rua – settlement act
 - b. Rangitāne o Wairarapa and Rangitāne o Tāmaki nui-ā-Rua – settlement act
23. [Ngāti Kahungunu ki Wairarapa Tāmaki nui-a-Rua Claims Settlement Act 2022](#) is a settlement of historical Treaty claims relating to the project area. The Act gives effect to certain provisions of the deed of settlement signed by Ngāti Kahungunu ki Wairarapa Tāmaki nui ā Rua and the Crown on 29 October 2021. [Ngāti Kahungunu ki Wairarapa Tāmaki nui-a-Rua deed of settlement documents](#) are accessible on the NZ Government Treaty settlements website.
24. [Rangitāne Tū Mai Rā \(Wairarapa Tamaki nui-ā-Rua\) Claims Settlement Act 2017](#) is a settlement of historical Treaty claims relating to the project area. The Act gives effect to certain provisions of the deed of settlement signed by Rangitāne o Wairarapa and Rangitāne o Tāmaki nui-ā-Rua and the Crown on 20 March 2021. [Rangitāne o Wairarapa and Rangitāne Tāmaki nui-ā-Rua deed of settlement documents](#) are accessible on the NZ Government Treaty settlements website.

Relevant Treaty settlement entities

Post-settlement governance entities

23. Under the FTCA, a Treaty settlement entity includes a post-settlement governance entity, defined as a body corporate or trustees of a trust established by a claimant group for receiving redress, or for participating in arrangements established under a Treaty settlement Act.
24. A post-settlement governance entity may exist ahead of finalisation of a deed of settlement and/or enactment of Treaty settlement legislation.
25. We have identified the following post-settlement governance entities in this category are also relevant:
 - a. Ngāti Kahungunu ki Wairarapa Tāmaki nui ā Rua Settlement Trust was ratified as the post-settlement governance entity for the Ngāti Kahungunu ki Wairarapa Tāmaki nui ā Rua Treaty settlement in November 2016. Ngāti Kahungunu ki Wairarapa Tāmaki nui ā Rua and the Crown signed a deed of settlement on 29 October 2021
 - b. Rangitāne Tū Mai Rā Trust was ratified as the post-settlement governance entity for the Rangitāne o Wairarapa and Rangitāne o Tāmaki nui-ā-Rua Treaty settlement in November and December 2013. Rangitāne o Wairarapa and Rangitāne o Tāmaki nui-ā-Rua and the Crown signed a deed of settlement on 20 March 2021.

Other bodies recognised or established under a Treaty settlement Act

26. A Treaty settlement entity is also defined for the purposes of the FTCA as including a board, trust, committee, authority, or other body, recognised in or established under a Treaty settlement Act.
27. We note the Wairarapa Moana Statutory Board is identified in the Rangitāne o Wairarapa and Rangitāne o Tāmaki nui-ā-Rua deed of settlement and was established under section 44 of Te Rohe o Rongokako Joint Redress Act 2022 as a statutory co-governance authority which oversees the administration and management of the Ruamahanga River catchment. As this Act is not defined under the FTCA as a Treaty settlement Act, the Board is therefore not a relevant treaty settlement entity.
28. However, we consider the project likely to directly affect the Ruamahanga River catchment and therefore have identified the Wairarapa Moana Statutory Board as a party which may have an interest in the project.

Relevant principles and provisions of the Treaty settlements for:

Ngāti Kahungunu, and Rangitāne o Wairarapa and Rangitāne o Tāmaki nui-ā-Rua

Crown acknowledgements and apologies

29. As part of all of the identified Treaty settlements, the Crown offers acknowledgements and an apology as part of Treaty settlement redress to atone for historical wrongs, restore honour, and begin the process of healing.

Relevant principles and provisions of the Ngāti Kahungunu ki Tāmaki nui-ā-Rua iwi Treaty settlement

30. The Crown acknowledges that Ngāti Kahungunu ki Wairarapa Tāmaki nui-ā-Rua did not sign te Tiriti o Waitangi/the Treaty of Waitangi in 1840. Nevertheless, the Crown further acknowledges that the undertakings it made to Māori in te Tiriti o Waitangi/the

Treaty of Waitangi apply to Ngāti Kahungunu ki Wairarapa Tāmaki nui-ā-Rua. The Crown hereby recognises the legitimacy of Ngāti Kahungunu ki Wairarapa Tāmaki nui-ā-Rua grievances and historical claims.

31. The Crown acknowledges that as a Treaty partner Ngāti Kahungunu ki Wairarapa Tāmaki nui-ā-Rua have honoured their obligations and responsibilities under te Tiriti o Waitangi/the Treaty of Waitangi. The Crown acknowledges that the sense of grief and loss suffered by Ngāti Kahungunu as a result of the Crown's failings endures today.
32. The Crown further acknowledges that it has failed to deal with the longstanding grievances of Ngāti Kahungunu in an appropriate way and that recognition of these grievances is long overdue.
33. The Crown pays tribute to the struggles of Ngāti Kahungunu ki Wairarapa Tāmaki nui-ā-Rua and your ancestors in pursuit of justice for the Crown's wrongs and especially to those who have not survived to see this settlement completed. To you, the people of Ngāti Kahungunu ki Wairarapa Tāmaki nui-ā-Rua, to your tīpuna and to your mokopuna, the Crown offers this apology.
34. The Crown unreservedly apologises for not honouring its obligations to respect te tino rangatiratanga o Ngāti Kahungunu ki Wairarapa Tāmaki nui-ā-Rua through repeated breaches of te Tiriti o Waitangi/the Treaty of Waitangi and its principles. The Crown profoundly regrets the damage and hurt these breaches have caused to the hapū and whanau of Ngāti Kahungunu ki Wairarapa Tāmaki nui-ā-Rua.
35. The Crown is deeply sorry that it began its relationship with Ngāti Kahungunu ki Wairarapa Tāmaki nui-ā-Rua in 1845 by prejudging their guilt in a dispute with settlers and depriving Ngāti Kahungunu ki Wairarapa Tāmaki nui-ā-Rua of tens of thousands of acres by forcing them to cede this land with threats of armed violence.
36. The Crown profoundly regrets that it threatened to end Pakeha settlement in Wairarapa and Tāmaki nui-ā-Rua unless your tīpuna sold their land to the Crown, giving up the pastoral leases they had negotiated with Pakeha which had provided Ngāti Kahungunu ki Wairarapa Tāmaki nui-ā-Rua with income and trade benefits while retaining ownership of the land, thus undermining how you had been engaging with settlement on your own terms for a number of years.
37. The Crown is deeply sorry it often failed to negotiate in good faith and actively protect your interests when purchasing land in Wairarapa and Tāmaki nui-ā-Rua. Instead of the social, economic and material benefits Ngāti Kahungunu ki Wairarapa Tāmaki nui-ā-Rua were led to expect from agreements with the Crown, you have been left virtually landless in your own rohe and many of the lands you have retained are uneconomic and landlocked. The Crown is sorry that this prejudice has been exacerbated by its many public works takings made without consulting Ngāti Kahungunu, and without regard for the wellbeing of Ngāti Kahungunu communities. The Crown apologises for these failures which have contributed to your cultural, social and economic marginalisation.
38. The Crown also profoundly regrets the harm to Ngāti Kahungunu ki Wairarapa Tāmaki nui-ā-Rua caused by its failure to protect your tribal structures after the native land legislation had individualised your previously tribal land tenure. 3.45 The Crown wholeheartedly apologises for not upholding the spirit of your tuku rangatira of Wairarapa Moana in 1896. You gave this great taonga to the Crown to end dispute and ensure its protection, and the Crown did not live up to its promises or your expectations. Instead your precious lakes were degraded, the promised reserves sold to others, your people placed on lands hundreds of kilometres from their whanaunga in the rohe of other iwi, and those lands were reduced by public works takings.

39. The Crown is deeply humbled that throughout its relationship with the Crown, Ngāti Kahungunu ki Wairarapa Tāmaki nui-ā-Rua has acted honourably in the face of great injustice. The actions of your rangatira ensured there was lasting peace in Wairarapa and Tāmaki nui-ā-Rua. The Crown pays tribute to your leading role in Kotahitanga, and your honourable interaction with the Crown which it has not always reciprocated.
40. Through this apology and settlement the Crown seeks to atone for these wrongs, begin the process of healing, and restore its tarnished honour. The Crown looks forward to forging a renewed and enduring relationship with the people of Ngāti Kahungunu ki Wairarapa Tāmaki nui-ā-Rua that is grounded in mutual trust, co-operation, and respect for te Tiriti o Waitangi/the Treaty of Waitangi and its principles.

Relevant principles and provisions of the Rangitāne o Wairarapa and Rangitāne o Tāmaki nui-ā-Rua iwi Treaty settlement

41. The Crown recognises the efforts of the ancestors of Rangitāne in pursuit of redress and justice for the Crown's wrongs, and offers this apology to Rangitāne o Wairarapa and Rangitāne o Tāmaki nui-ā-Rua, to their ancestors and to their descendants.
42. The Crown is deeply sorry for its many breaches of te Tiriti o Waitangi/the Treaty of Waitangi and its principles, and for the effect that these breaches have caused to generations of Rangitāne o Wairarapa and Rangitāne o Tāmaki nui-ā-Rua.
43. The Crown sincerely regrets that on a number of occasions it failed to negotiate in good faith and actively protect Rangitāne o Wairarapa and Rangitāne o Tāmaki nui-ā-Rua interests when purchasing land in their takiwā. The Crown profoundly regrets that it failed to actively protect the tribal structures of Rangitāne o Wairarapa and Rangitāne o Tāmaki nui-ā-Rua after it promoted native land legislation which individualised their previously tribal land tenure.
44. The Crown deeply regrets that Rangitāne o Wairarapa and Rangitāne o Tāmaki nui-ā-Rua did not experience the prosperity the Crown led them to expect when it pressured them to sell large areas of land before 1865. The Crown sincerely apologises that it failed in its Treaty duty to protect them from being left virtually landless, and they have for too long experienced socio-economic deprivation and disadvantage.
45. The Crown deeply regrets the prejudice Rangitāne o Wairarapa and Rangitāne o Tāmaki nui-ā-Rua have suffered from the degradation of lakes and rivers, the felling of Te Tapere-nui-o-Whātonga (the Seventy Mile Bush), and the loss of taonga such as the huia.
46. The Crown regrets that its former limited recognition of Rangitāne o Wairarapa and Rangitāne o Tāmaki nui-ā-Rua contributed to the challenges experienced by Rangitāne o Wairarapa and Rangitāne o Tāmaki nui-ā-Rua in maintaining a distinct iwi presence from 1840 to the present. The Crown unreservedly apologises for not respecting the rangatiratanga of Rangitāne o Wairarapa and Rangitāne o Tāmaki nui-ā-Rua and for not having honoured its obligations to Rangitāne o Wairarapa and Rangitāne o Tāmaki nui-ā-Rua under te Tiriti o Waitangi/the Treaty of Waitangi.
47. Through this settlement and this apology, the Crown seeks to restore its honour and atone for its wrongs to the whānau and hapū of Rangitāne o Wairarapa and Rangitāne o Tāmaki nui-ā-Rua by easing the burden of grievance that has been carried for generations. The Crown looks forward to developing a new relationship with Rangitāne o Wairarapa and Rangitāne o Tāmaki nui-ā-Rua that has mutual trust and respect for te Tiriti/the Treaty and its principles as its foundation.

Redress within the Treaty settlements

Resource management matters

48. Affording respect to the views of iwi on resource management matters and enabling iwi to meaningfully participate as a Treaty partner in resource management decision-making within their takiwā/area of interest are important ways in which the Crown can give effect to these acknowledgements and apologies.

Other redress of the Treaty settlement

49. The Treaty settlement created a new co-governance or co-management process. We have identified the Wairarapa Moana Statutory Board as a relevant Treaty settlement entity who may have an interest in the project, however we do not consider that this would affect decision-making under the RMA for the project, as the proposed project does not directly affect any specific commercial or cultural redress provided by the Treaty settlement.
50. As a general principle, an absence of specific settlement redress does not indicate the absence of an iwi cultural association with ancestral lands, sites, wāhi tapu or other taonga within an area. Local tangata whenua and their representatives would be best placed to advise on such matters in the first instance.
51. Importantly, cultural associations with ancestral lands, water, sites, wāhi tapu, and other taonga – regardless of whether or not they are specifically identified in a Treaty settlement – are deemed to be matters of national importance that must be recognised and provided for in decision-making under Part 2 section 6(e) of the RMA.

Current negotiation mandates and settlement negotiations

52. There are no recognised mandates for negotiation of any further historical Treaty claims, or any current or anticipated negotiations for settlement of historical Treaty claims, affecting the proposed project site.

Details in this report affect certain provisions of the FTCA

Notices of referral decisions

53. Under section 25 of the FTCA, you must give notice of the decisions made on an application for referral of a project to a panel, and the reasons for your decisions, to the applicant and anyone invited to comment under section 21 of the FTCA.
54. You did not invite comment on the referral application from iwi authorities or other Māori groups. However, if you decide to refer this project to a panel, the notice of decisions and associated reasons must be given to:
- a. the relevant iwi authorities and Treaty settlement entities identified in this report
 - b. any other iwi authorities or Treaty settlement entities you consider have an interest in the matter
 - c. any group that is or party to either a joint management agreement or Mana Whakahono ā Rohe under the RMA that relates to the project area.
55. We have identified two relevant iwi authorities and two Treaty settlement entities for receipt of the notice of decisions. Contact details are in Attachment 2.
56. We have identified two other parties which may have an interest in the project for receipt of the notice of decisions if you decide to refer the project. Contact details are in Attachment 2.
57. There are no relevant joint management agreements or Mana Whakahono ā Rohe to consider.

Expert consenting panel membership and invitation to comment

58. If a project is referred to a panel, the appointed panel must include one person nominated by the relevant iwi authorities under clause 3(2)(b) of Schedule 5 of the FTCA.
59. In the event iwi authorities nominate more than one person, the panel convener must decide which nominee to appoint. The panel convener has discretion to increase the panel membership to accommodate the matters specified in clauses 3(6)(a) – 3(6)(e) of Schedule 5 of the FTCA, which include matters unique to any relevant Treaty settlement Act.
60. A panel must invite comments on a resource consent application or notice of requirement for a referred project from the parties listed in clause 17(6) of Schedule 6 of the FTCA. This includes:
 - a. the relevant iwi authorities, including those identified in this report
 - b. a Treaty settlement entity relevant to the referred project, including an entity that has an interest under a Treaty settlement in an area where a referred project is to occur, and an entity identified in this report
 - c. any applicant group under the MACAA identified in the report obtained under section 17(1).
61. If you decide to refer, we have identified two relevant iwi authorities and two Treaty settlement entities for the proposed project, from whom a panel must invite comment.
62. A panel may also invite comments from any other person it considers appropriate.
63. We have identified two other parties which may have an interest in the project. We recommend you direct a panel under section 24(2)(e) of the FTCA to invite their comment if you decide to refer the project.

Provision of cultural impact assessment

64. Any resource consent application submitted to a panel for determination must include a cultural impact assessment prepared by or on behalf of the relevant iwi authorities, or a statement of any reasons given by the relevant iwi authorities for not providing that assessment.² The Environmental Protection Authority which provides support services to a panel, will not confirm an application as complete and ready for consideration by a panel until this requirement is satisfied.
65. There is more than one relevant iwi authority. The project applicant will need to engage with each to determine their requirements for a cultural impact assessment, including whether they wish to prepare one individually or jointly, or whether they may wish to defer to another iwi in respect of the matter. Relevant iwi authorities are listed in Attachment 2.

² Clause 9(5), 13(1)(k) and 13(1)(l) of Schedule 6 of the FTCA.

Attachment 1 – Project Location – Surrounding Area



Attachment 2 – Contact information

Iwi/hapū	Settlement documents / Status	Representative body	RMA relevant iwi authority	Treaty settlement entity (PSGE)	Other party	Contact person
Ngāti Kahungunu ki Wairarapa		Ngāti Kahungunu Iwi Incorporated	Iwi authority for RMA purposes			CEO: Chrissie Hape Environmental Director: Ngaio Tiuka s 9(2)(a)
	Ngāti Kahungunu ki Wairarapa Tāmaki nui-a-Rua Claims Settlement Act 2022	Ngāti Kahungunu ki Wairarapa Tāmaki nui ā Rua Settlement Trust		Post-settlement governance entity		CEO: Lee Gray admin@kkwtmr.org.nz
		Ngāti Kahungunu ki Wairarapa			Represents Ngāti Kahungunu ki Wairarapa hapū for RMA purposes	CEO: Taiawhio Gemmell RMA contact: Rawiri Smith s 9(2)(a)
Rangitāne o Wairarapa		Rangitāne o Wairarapa Incorporated	Iwi authority for RMA purposes			CEO: Mhirangi Hollings RMA contact: Horipo Rimene s 9(2)(a)
	Rangitāne Tū Mai Rā (Wairarapa Tamaki nui-ā-Rua) Claims Settlement Act 2017	Rangitāne Tū Mai Rā Trust		Post-settlement governance entity		GM/RMA Contact: Darrin Apanui s 9(2)(a)
		Wairarapa Moana Statutory Board			Other party may have an interest	Chair: Kingi Winiata Smiler info@wairarapamoana.org.nz

Attachment 3 – Planned Layout

